

REMARKS

This paper is filed in Response to the non-final Office Action mailed January 23, 2009. Claims 79, 95 to 105 are pending. Claims 80 to 94 have been cancelled without prejudice. Applicants maintain the right to prosecute the cancelled claims in any related application claiming the benefit of priority of the subject application. New claims 104 to 105 have been added. Accordingly, upon entry of this paper, claims 79 and 95 to 105 are under consideration.

Regarding the Interviews

Applicants thank the Examiner for informal discussions on or about April 20, 2009, during which time allowable subject matter was discussed. Upon entry of this paper, the claims under consideration are consistent with Applicant's understanding of what is allowable.

Regarding the New Claims

New claims 104 and 105 are supported throughout the specification. In particular, claim 104 is supported, for example, by originally filed claim 52, and at page 30, line 19, to page 31, line 3. Claim 105 is supported, for example, by originally filed claims 19 to 26, and at page 19, lines 24-25. Thus, as claims 104 and 105 are supported by the originally filed specification, no new matter has been added and entry thereof is respectfully requested.

I. REJECTIONS UNDER 35 U.S.C. §112, FIRST PARAGRAPH, ENABLEMENT

The rejection of claims 79 to 99 and 103 under 35 U.S.C. §112, first paragraph as allegedly lacking enablement is respectfully traversed. According to the Patent Office, CM-1 antibody is required to practice the invention, which can be met by satisfying the deposit requirements under 37 C.F.R. §§1.801-1.809.

Claims 79 to 99 are adequately enabled under 35 U.S.C. §112, first paragraph. In this regard, the specification discloses CM-1 heavy and light chain variable region sequences (Figures 1 and 2). Consequently, one skilled in the art could make and use CM-1 antibody without undue experimentation.

Nevertheless, solely in order to further prosecution and without acquiescing to the propriety of the rejection, claims 80 to 94 have been cancelled herein without prejudice. Consequently, the rejection of claims 80 to 94 under 35 U.S.C. §112, first paragraph,

enablement, is moot. The rejection will therefore be addressed insofar as if applied to claims 79 and 95 to 99.

Access to the biological deposit for the cell line producing CM-1 antibody (accession no. DSM ACC2584, deposited on March 5, 2003) will be as provided under 37 C.F.R. §1.808(a) and (b). The biological deposit information does not create any presumption that the deposited material is required to satisfy 35 U.S.C. §112.

In view of the fact that one skilled in the art could make and use CM-1 antibody without undue experimentation in view of the heavy and light chain variable regions sequences disclosed in the specification, and the foregoing assurances concerning deposit availability, claims 79 and 95 to 99 can be practiced without undue experimentation. Accordingly, claims 79 and 95 to 99 are adequately enabled and Applicants respectfully request that the rejection under 35 U.S.C. §112, first paragraph, be withdrawn.

The rejection of claims 100 and 101 under 35 U.S.C. §112, first paragraph as allegedly lacking enablement is respectfully traversed. The grounds for rejection are set forth on pages 7-9 of the Action.

Claims 100 and 101 have been amended to depend from claim 79. Claim 79 recites, among other things, a binding function according to claim 79. Consequently, as amended claims 100 and 101 recite such a binding function, these claims are adequately enabled and Applicants respectfully request that this rejection under 35 U.S.C. §112, first paragraph, be withdrawn.

II. REJECTION UNDER 35 U.S.C. §112, FIRST PARAGRAPH, WRITTEN DESCRIPTION

The rejection of claims 80 to 94 under 35 U.S.C. §112, first paragraph as allegedly lacking an adequate written description is respectfully traversed. According to the Patent Office, allegedly the claims lack support in the as-field specification.

Applicants respectfully reiterate that claims 80 to 94 are adequately described under 35 U.S.C. §112, first paragraph for the reasons of record. Nevertheless, solely in order to further prosecution and without acquiescing to the propriety of the rejection, claims 80 to 94 have been cancelled herein without prejudice. Consequently, the rejection under 35 U.S.C. §112, first paragraph, written description, is moot.

CONCLUSION

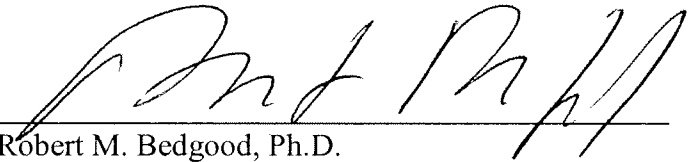
In summary, for the reasons set forth herein, Applicants maintain that claims 79 and 95 to 105 clearly and patentably define the invention, respectfully request that the Examiner reconsider the various grounds set forth in the Office Action, and respectfully request the allowance of the claims which are now pending.

If the Examiner would like to discuss any of the issues raised in the Office Action, Applicant's representative can be reached at (858) 509-4065.

Please charge any additional fees, or make any credits, to Deposit Account No. 50-2212.

Respectfully submitted,

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